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but not all of it; the king will come round for his share. The king has a right . . . call it governmental, call it proprietary, call it what you will, it ends in bread and beer; and that is where the cultivator's right ends."

This is good reading and good thinking. If any one deem it baseless conjecture, brilliantly expressed, let him look at the Appendix. This occupies more than half the book, and records a patient and exhaustive investigation into the history of the Cambridge fields and houses from Domesday to this century, with a few careful notes on the history and institutions of the borough. Professor Maitland's thought is clear and his style graceful because he has made his investigation and formed his conclusions before he has attempted to write his book.

J. H. B.

A TREATISE ON THE LAW OF NEGLIGENCE. In two volumes. By Thomas G. Shearman and Amasa A. Redfield. Fifth edition. Substantially rewritten. New York: Baker, Voorhis, & Co. 1898. pp. ccii, 1,427.

This work requires no general introduction; and the reviewer's attention is now to be confined mainly to the changes and additions which appear in the fifth edition. Negligence so pervades the different branches of the law that any treatment of it must be rather disjointed. The same general principles, however, run through the subject; and by setting forth these principles in the first chapter and following them throughout, the authors avoid the error of making a mere collection of authorities. This preliminary is clearly and acutely written, although it is believed that complexity would have been avoided if, instead of three degrees of care, simply due care under all the circumstances had been used as a basis. Accuracy of definition avoids much of the danger caused by this complexity. But the preliminary statement of principle is little changed from the fourth edition, and hence is not directly under consideration.

From 1,429 pages of the fourth edition the two volumes have now reached a total of 1,629 pages. Some sections are altered, some entirely rewritten; and a very complete collection is made of cases decided, even during the last year, on almost every conceivable point or diversity. The late cases are, as a rule, carefully classified, although occasionally a case is not given its full significance. *Spade v. Lynn & Boston R. R. Co.*, 168 Mass. 285, for instance,—a case decided hardly more than twelve months ago,—is the first case cited as showing that damages cannot be recovered for mental suffering negligently caused; whereas in fact the case was the second in America to raise the doubtful question whether damages can be recovered for actual physical injury resulting from mental shock. The rule laid down by the court, that there can be no recovery for such an injury, by no means follows from the rule discussed in the text; yet this further question is not touched upon. This oversight, however, is exceptional, and the references are generally well made.

The chief alteration in the present edition is in the treatment of that exception to the fellow-servant rule known as the "Vice-Principal" doctrine. Such a doctrine, the authors state, has become generally accepted since the publication of the last edition. This statement at first reading is startling; and although it is modified by careful definition so that the word "vice-principal" assumes a meaning not generally attributed to it, the statement seems somewhat too broad. Starting with the opinion that such a rule ought to exist, the writers are inclined to take their point of

view too seriously, and seem over eager to spell their rule out of cases which do not necessarily go to the full length. It must be remembered that aside from a vice-principal rule there is another rule imposing upon a master certain duties to his employees which he cannot delegate ; and if a master delegates a duty of this sort to a servant who fails to perform it, he is himself liable. The New York rule, which the reader is given to understand has the authors' support, is stated as providing that "a vice-principal is one to whom is deputed the discharge of some duty *or the exercise of some power* which belongs to the master as such." § 231. This definition appears to confuse the two rules just alluded to. So far as the first part of the rule goes, that a master is liable to one servant for the act of another servant who is performing a duty belonging to the master, we agree ; he is liable, however, not because his servant is a vice-principal, but because he himself is under a duty the responsibility of which he cannot escape by delegating its performance. McKinney, *Fellow-Servants*, § 70 ; Bishop, *Non-Contract Law*, 665, note. As for the master being further liable for the acts of a servant to whom he has delegated merely his powers, we do not agree. Such a doctrine is not justified by any of the cases cited in New York, where the consideration has always been whether the act of the servant was one which the master was under a duty to do. *Hawkins v. N. Y., L. E. & W. R. R. Co.*, 142 N. Y. 416. Although the broader rule once had the sanction of the United States Supreme Court in the "Ross Case," we can hardly agree that later "the 'Baugh Case' inferentially recognizes the rule," § 233, note 2 ; on the contrary, while the court takes pains to distinguish the former case, it seems "inferentially" to overrule it. The decision in the "Baugh Case" has since been followed by several courts, which have treated it as practically overriding the "Ross Case." 8 HARVARD LAW REVIEW, 57. A few States, it must be admitted, fully support the broader rule ; but the rule should not be laid down too sweepingly. Its treatment in the text, moreover, appears to be inconsistent with § 232, note 1, which deals with the master's liability as requiring that the act of the so-called vice-principal should be one which the master is under a duty to do, or else that the master himself be fixed with some personal wrong. That treatment is on principle the better one ; and the writers themselves apparently try to make all cases conform to that test. All cases in which the question is raised whether or not a general agent is a vice-principal are dealt with as cases where the principal has delegated the performance of a duty to the agent, the theory being that principals owe a duty of superintendence even in matters of detail. It is doubtful, however, whether the principal ever does owe such a duty, apart from the duty to establish suitable regulations, furnish suitable appliances, and hire competent servants. In the absence of such a duty, when a superintendent is appointed he is ordinarily under a duty simply to his employer, a duty like that of all the other employees ; and he is to all intents and purposes their fellow-servant. If this rule ever works injustice, is it not by reason of the inherent evil of fellow-servant rule? The failure to distinguish between the vice-principal rule and the different phases of the rule imposing on masters certain unassignable duties is to be regretted ; for a discussion that fails even to notice the distinction can hardly be considered adequate.

It is not intended by these criticisms to disparage the merit of this work of Shearman and Redfield. While we disagree with some of the

positions taken, they are all taken skilfully, and logically developed ; and the work must be recognized as a standard upon the subjects with which it deals.

J. G. P.

THE LAW OF NEGOTIABLE INSTRUMENTS: STATUTES, CASES, AND AUTHORITIES. Edited by Ernest W. Huffcut, Professor of Law in Cornell University College of Law. New York: Baker, Voorhis, & Co. 1898. pp. xvi, 700.

The most important result of the efforts of the American Commissioners on Uniformity of Laws has been the recent enactment in several of our States of the Negotiable Instruments Law, a codification of the law of negotiable paper based upon the English Bills of Exchange Act. Mr. Huffcut's volume is perhaps the most elaborate annotated edition of this statute that has yet appeared. Part I. contains the statute and the English Bills of Exchange Act. The text of the former is accompanied by numerous annotations, including many of the notes made by the draftsman, J. J. Crawford, Esq., as they appeared in the draft printed by the Commissioners. Article I. of Part II. contains selections from various legal writers on such topics as codes governing negotiable paper, the construction of codifying statutes, and the history of the law merchant. In Article II. of Part II. there are about three hundred annotated cases, mostly American, illustrating the provisions of the code, to which there are cross references.

The editor states that his volume is intended primarily for students, and he is undoubtedly right in saying that the importance of the Negotiable Instruments Law, especially in view of its probable enactment in a majority of our States, renders necessary a familiarity with the statute on the part of students. A word of caution, however, might well be given to those intending to use this volume as a text-book ; for, were the student and instructor to rely primarily upon the statute, referring only incidentally to the decisions, instead of using the act merely as supplementary to the reading and discussion of the cases, there would be the danger that the study of the subject might be robbed of its vitality and value. In certain instances, furthermore, the order in which the cases are arranged might perhaps have been improved upon, to bring out more clearly the development of the subject as a whole. While the work is designed chiefly for use by students, the practising lawyer, especially in jurisdictions where the statute has been enacted, will undoubtedly find Mr. Huffcut's book serviceable.

H. D. H.

A TREATISE ON THE MILITARY LAW OF THE UNITED STATES. By George B. Davis, U. S. A. New York: John Wiley & Sons. 1898. pp. xii, 754.

Particularly interesting at this time of our military activity is a comprehensive and clear exposition of the military law of the United States. The writer, whose experience and position well fit him for the task, deals with the sources and authority of our military law ; the constitution, composition, and jurisdiction of courts martial and their method of procedure ; the articles of war, with a full discussion of each one ; and the forms used in framing the charges and pleas in the several tribunals.

The work is well done. The divisions of subjects and chapters have, as a rule, been clearly arranged ; the discussions are exhaustive, without